

Keynote Speech at the Italian Parliament Buildings, Rome at the Valore Sociale International Conference on Business and Human Rights: Corporate Social Responsibility, accountability and control of the Supply Chain – Wednesday 28 October 2009

The importance and implications of the United Nations “Protect, Respect and Remedy” Framework on business and human rights

John Morrison Executive Director of the Institute for Human Rights and Business

I would like to thank Valore Sociale for this opportunity. It is a very important time to be discussing business and human rights here in Europe. Next month, the 27 member states of the European Union will be meeting at a conference in Stockholm under the Swedish Presidency. Fundamentally, they will be discussing how to align the business and human rights framework agreed by States within the context of the United Nations, with that of the European Union and other bodies such as OECD.

It is now ten years since Kofi Annan stood up in Davos and announced that there should be a ‘Global Compact’ between business and the work of the United Nations on the issues of human rights, labour rights and the environment. As you know, anti-corruption has also been added as the 10th Principle. There was no initiative in mind when he made the speech, but the later events of 1999 – in particular the anti-globalisation riots in Seattle – focused minds in New York and elsewhere.

The Global Compact has been successful in initiating a dialogue of corporate responsibility in all corners of the world. Although the Compact is voluntary in nature (for which it is sometimes criticised) it has promoted discussion, by and with, big business which shouldn’t be under-estimated in terms of helping bring about much needed change.

However, the real watershed in business and human rights came in June 2008, when all member states of the United Nations Human Rights Council – I repeat all – including states such as the USA, China and Russia – welcomed the ‘Protect, Respect and Remedy’ Framework put forward by the UN Secretary-General’s Special Representative on Business and Human Rights, Professor John Ruggie of Harvard University. This framework is a milestone in the evolution of human rights generally and also the end of stale old arguments about whether corporate responsibility is a mandatory or voluntary endeavour – it is clearly both. It moves the world away from Milton Friedman (‘the business of business is business’) and back to what Adam Smith really meant when talking about the true ‘wealth of nations’ – free trade built on fairness and justice.

In this speech I want to convey three key messages:

- (i) First, that there are a range of complex business and human rights issues that involve dilemmas of policy and practice which can only be solved if there is a common universal framework for action by states, business and civil society;
- (ii) Secondly, that the UN endorsed ‘Protect, Respect, Remedy’ framework does not provide all the answers, but does offer us a rare opportunity to move forward across historic divides;
- (iii) Thirdly, that there is hard work ahead, and that all of us have to be willing to listen to and respect each other in order to address common challenges.

So, let me begin by briefly outlining ten examples of current policy and practice dilemmas facing us all:

1. The private auditing of labour rights in supply chains is important but not, on its own, a sustainable solution to the systemic challenges facing the societies where international businesses are increasingly exposed. We need better labour inspections by states, less audit fatigue caused by multiple compliance codes and also ways of reaching much deeper into supply chains by developing greater capacity amongst small and medium-sized companies.

2. Too many countries in South America, Africa and Asia are still cursed by their natural resources: oil, coal, minerals and other natural resources. These should be a blessing – but their correlation with corruption, conflict and the abuse of human rights is still far too high. Efforts such as the ‘Voluntary Principles on Security and Human Rights’, the ‘Extractive Industries Transparency Initiative’ and the ‘Montreux Document on Private Military and Security Companies’ are important but they are, by their own admission, only small parts of the picture. Have the lessons of human rights violations linked to oil and gas production in Nigeria, Colombia, Indonesia or Myanmar – truly been learned? Is the situation today any better in countries such as Libya, Venezuela and Angola? How do we more fully engage with the Russian, Indian and Chinese extractive companies on good practices in a way that is respectful of their interests and not seen just as western protectionism?

3. We do not seem to be any closer to understanding the criteria needed for decisions around divestment from countries experiencing large scale and grave human rights violations: what represents legitimate positive engagement and what represents complicity in human rights abuses? Is Sudan a better place because there are no American or Canadian oil companies there? Why do we have different principles each time there is pressure on business to withdraw – be it from Apartheid South Africa, Northern Ireland or Myanmar?

4. The current mechanisms to hold businesses accountable beyond national jurisdictions are at present relatively weak. The OECD Guidelines on Multinational Enterprises are currently being reviewed, but the way that National Contact Points work varies greatly between states and business does not always listen to the opinions expressed. It seems that civil law cases, in particular the Alien Tort Claims Act (ATCA) cases in the USA, continue to be the tail that wags the dog. Is there room for an international or at least a European Ombudsperson to hear complaints and which has greater legal powers?

5. Increasingly civil society, responsible investors and other stakeholders are calling for greater disclosure of the entirety of business impacts on human rights. One example is taxation. If a company is supportive of human rights, but at the same time seeks to minimize (or sometimes evade) the payment of tax to national governments, this clearly can be detrimental to obligations of states to fulfill human rights, in particular rights such as health, education, housing and work. What then are the human rights implications of tax policy?

6. European businesses operating in other countries around the world sometimes find themselves in a direct contradiction between national law (or practice) and international law and expectations. There are many examples of this, such as privacy law in China in relation to information technology, labour rights in the USA or women’s rights in parts of the Middle East. Of course, companies from elsewhere in the world operating in Europe might find as well that our local laws may fall short of international norms on issues such as freedom of expression or the rights of migrant workers. What then should a business do - it has to follow national laws but how does it also navigate international norms? And when will we have a more level playing field for all businesses regardless of where they are operating? We should note also perceived contradictions. For example - the European Chamber of Commerce was said to be lobbying against proposed reforms to Chinese labour law in 2008, even though these reforms in China brought their regulations closer to international standards.

7. Related closely to my previous point is the expectation on companies to ‘speak out’ or ‘advocate’ on human rights issues. This is a very difficult subject. Business leaders do make confidential interventions with host governments, sometimes with regard to the human rights of workers or other stakeholders. However, it is often inappropriate for a business to discuss publicly that it does do this. Is there ever a concept of ‘silent complicity’ and if so how is this monitored?

8. Great progress has been made in some areas of corporate governance and anti-corruption legislation and practice; although these issues continue to be a big problem in many countries. How can human rights help here? How do we integrate human rights into business ethics and look at integrity measures, rather than simply compliance?

9. We have yet to develop a common way of measuring all of our human rights impacts. There is a lot of activity here across many supply chain codes, the Global Reporting Initiative and the soon to be finalized ISO 26000 social standard - but not yet convergence around a common series of benchmarks that cover the full range of human rights. The Business Leaders Initiative on Human Rights was one attempt to do this.

10. Finally, we also have the problem of competing methodologies. There is now much discussion about Human Rights Impact Assessments but we have yet to develop quality control around what methods of assessment are truly aligned with human rights and which are not.

So, clearly there are a complex range of issues and challenges still to be addressed. That leads me to the second message I want to reflect on with you today. We have these ten challenges – how do we turn them into opportunities? Specifically, how does the United Nations ‘Respect, Protect and Fulfil’ framework – designed by Professor John Ruggie and endorsed by States in 2008 – help us to make progress in the years ahead?

The framework consists of three pillars: the first relates directly to Governments and the ‘state duty to **protect** human rights in relation to the activities of businesses. It is this state duty to protect that is the main focus of the European Union conference next month, where there is an opportunity for the 27 member states to explore how better to align European national and regional policy with this element of the framework.

John Ruggie suggests there is a need for both greater horizontal and vertical alignment. Horizontally, we still have an uneven playing field between EU member states themselves. For example, human rights reporting is mandatory for some companies in some EU member states, whilst for the majority it remains a purely voluntary enterprise. Similarly, national corporate law places different non-financial duties on senior executives and non-executive Board members, as differences in libel law place different restraints on the media and civil society with regard to the alleged abuses of companies. Whilst trade conditionality and embargos are an issue of EU policy, national governments have markedly different positions on trade in specific ‘challenging’ third countries outside of the Union. Add to this the different tax regimes, particularly those relating to tax-free havens sponsored by some member States. None of these differences is purely a business and human rights issue, but all combine to create differences in human rights policy and practice between member states and specific companies.

Vertically, the issues of integration relate to inconsistencies within each member state. Sweden is the only member State, perhaps with the exception of Denmark, with national legislation that requires vertical integration across national laws and practice in relation to corporate responsibility. Typically, this will include issues of trade, investment, overseas development as well as corporate law. Examples of non-alignment include: the ways in which bilateral investment treaties and host-government agreements are negotiated and applied; the absence of references to human rights in most Export Credit Guarantee schemes; or Overseas Development Assistance funding that bypasses the issue completely – notable exceptions include the strong work of GTZ, Danida and Sida in this area.

The need for greater horizontal and vertical alignment is not a criticism of Europe or its member states. Rather it is an opportunity for us all to realise the potential of both the Lisbon Treaty and a common European Constitution.

Professor Ruggie's second pillar relates to the Corporate Responsibility to Respect Human Rights. Here, the United Nations for the first time in its history has taken the words of the Universal Declaration of Human Rights at face value – that “every organ of society” has a responsibility when it comes to human rights and that we need not wait for Governments to take the lead. This does not mean that business has human rights responsibilities equal to those of States, far from it, but rather that the corporate responsibility to respect human rights exists even in environments where States are unwilling or unable to realise their own duties.

In Europe, this means stronger co-operation on how the corporate responsibility to respect human rights is ‘operationalized’ by businesses on the ground inside and outside of Europe. It means a common definition of what a human rights impacts assessment is and which methodology or methodologies are of acceptable diligence and quality. It means a common expectation for all companies registered in or operating in Europe to have policies that relate to the full breadth of human rights. It might also mean that the way in which the monitoring and reporting of business activity is measured and reported will become increasingly standardized; and that more similar expectations are placed on suppliers of European businesses around the world.

The final pillar in the Protect Respect Remedy Framework relates to the provision of and access to adequate remedies for the victims of human rights abuses related to business activity. I think many businesses, as well as civil society, would agree that the OECD Guidelines and the mechanism of national contact points is part of, rather than the *whole* solution. Professor Ruggie's team are researching a broad spectrum of legal and non-legal dispute resolution mechanisms currently deployed by states and businesses alike. The more difficult question is what kind of recommendations will Professor Ruggie make in relation to ‘extra-territorial mechanisms’, where one state will hold a business to account beyond its own shores and jurisdiction. Here, there is a wide spectrum of expectations from different stakeholders and some very real legal and political challenges ahead.

All in all, then, the three pillars advanced by the United Nations offer a firm basis for all of us to approach the dilemmas I outlined at the start, as well as other challenges I have not had time to discuss here. The Protect Respect Remedy framework does not offer all the answers, but it does help us ask the right questions and make progress across borders and between sectors of business and society.

Finally, my third message points to the future. There is still much to do – and a great need for continuing dialogue and a willingness to search for common ground. The Institute for Human Rights and Business which was launched earlier this year and which I am proud to serve as Executive Director spent 18 months consulting with over 800 stakeholders in parts of Asia, Africa, Europe and the Americas. We asked, and continue to ask, what are the biggest priorities for the policy and practice agenda in business and human rights. The strongest answer, in particular from emerging and developing economies, is that human rights and business must relate to fundamental issues such as water, land, conflict, trade and the effects of climate change. I hope that all of us in this room will look at these key challenges – including the discussions in Copenhagen this December – as issues of justice and accountability in which the role of business is to be part of the solution and not part of the problem.

I would like to thank you all for your patience and I wish us all a productive day ahead.

(END).

John Morrison, Executive Director

Institute for Human Rights and Business, October 2009